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**In the Supreme Court**


OF THE

**United States**

OCTOBER TERM, 1977

**No. 77-861**

TOMMIE ANN HILDEBRAND,  
*Petitioner,*

 *VS.*

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS  
BOARD; CALIFORNIA EMPLOYMENT DEVELOPMENT  
DEPARTMENT; and CEL-A-PAK, INC., a  
California corporation,  
*Respondents.*

**REPLY BRIEF OF RESPONDENT  
CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT,  
RULE 24(4)**

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## PRELIMINARY STATEMENT

Respondent Department must reassert that this case involves an issue of fundamental First Amendment rights. Unless the decision below is reversed, Respondent Department will be required to disqualify Unemployment Insurance claimants who attempt to exercise good faith religious beliefs. The purpose of this brief, however, is to clarify erroneous statements made by Respondent Cel-A-Pak in its Opposition to the Petition for Writ of Certiorari. Respondent

Cel-A-Pak has incorrectly stated the facts concerning its unemployment "reserve account" and then argued that there is no case and controversy. Neither of these propositions is correct.

#### **STATUTORY PROVISION INVOLVED**

Section 1338 of the California Unemployment Insurance Code provides as follows:

"If the Appeals Board issues a decision allowing benefits the benefits shall be paid regardless of any further action taken by the directors, the Appeals Board, or any other administrative agency, and regardless of any appeal or mandamus, or other proceeding in the courts. If the decision of the Appeals Board is finally reversed or set aside, no employer's account shall be charged with the benefits paid pursuant to this section."

#### **ARGUMENT**

##### **I**

#### **CEL-A-PAK'S RESERVE ACCOUNT WAS NOT CHARGED**

Respondent Cel-A-Pak argues first that its Unemployment Insurance reserve account was charged (p. 7, Brief in Opposition), and then that it is confused as to the status of its reserve account (p. 8, Brief in Opposition). There is no reason for any confusion, nor any basis for the assertion that Respondent Cel-A-Pak's reserve account has been charged. Pursuant to Unemployment Insurance Code Section 1033,<sup>1</sup> Respondent Department has furnished

<sup>1</sup>All references are to the California Unemployment Insurance Code.

Respondent Cel-A-Pak annual tax statements which itemize the charges against its reserve account.<sup>2</sup> These notices reflect that no charges have been made to Respondent Cel-A-Pak's reserve account for petitioner Hildebrand's unemployment insurance benefits.

No charges were assessed against Respondent Cel-A-Pak's account pursuant to Unemployment Insurance Code Sections 1338 and 1380, regarding petitioner because Respondent Cel-A-Pak appealed the Superior Court decision. Whether Respondent Cel-A-Pak's account is ultimately charged with petitioner's Unemployment Insurance benefits will depend upon the decision of this Court.

##### **II**

#### **THERE IS AN ACTUAL CASE AND CONTROVERSY INVOLVING RESPONDENT CEL-A-PAK'S TAX LIABILITY AS WELL AS THE PROTECTION OF FIRST AMENDMENT RIGHTS.**

In addition to the fact that the decision below will require Respondent Department to disqualify unemployment insurance claimants who, like petitioner, attempt to exercise good faith religious beliefs, the question of charges to Respondent Cel-A-Pak's "reserve account" constitutes a case and controversy within the meaning of Article III, Section 2 of the Constitution.

Under the California Unemployment Insurance system, benefits paid to an unemployed individual during any benefit year are charged against the re-

<sup>2</sup>At its request, Respondent Cel-A-Pak has been sent duplicate copies of the pertinent portions of these tax statements.



serve account of the person or entity which employed the individual during the period of time upon which his entitlement to benefits is based. The amount of money an employer is required to pay into the state unemployment fund is based on benefits paid to terminated employees which are charged to its reserve account. Sections 1025-1032, 976-978. (See *California Department of Human Resources Development v. Java* (1971) 402 U.S. 121.)

In this case, Respondent Department paid the benefits due petitioner pursuant to the decision of the California Unemployment Insurance Appeals Board which appears in the Appendix to the Petition, pages 90a-92a. However, before Respondent Department could assess Respondent Cel-A-Pak's account for those benefits pursuant to Board's decision, Respondent Cel-A-Pak appealed. While the issue was on appeal, Respondent Department did not assess petitioner Hildebrand's charges. The California Supreme Court reversed the Superior Court's decision upon which the Board's direction to charge Respondent Cel-A-Pak's account was based. The effect of the California Supreme Court's decision is to prevent charges against Cel-A-Pak's reserve account unless that decision is reversed by this Court. However, if it is reversed, Respondent Cel-A-Pak's reserve account can and will be charged.<sup>3</sup>

<sup>3</sup>Benefits which are not chargeable to any individual employer's reserve account are charged to the "balancing account". Section 1027(b). All employers pay into this account at the same rate. Sections 976.5, 1027. The costs of petitioner's benefits thus far have been charged to this balancing account. Respondent Department has the responsibility of ensuring that only those benefits which are not chargeable to a specific employer are charged to the balancing account.

This Court's decision will determine the issue of Respondent Cel-A-Pak's tax liability. Respondent Department will not assess charges against Respondent Cel-A-Pak's account if the decision below is affirmed. Conversely, Cel-A-Pak's reserve account will be charged if that decision is reversed.

### CONCLUSION

There is a case and controversy. The deprivation of constitutional rights required by the decision below can only be remedied by this Court. The Petition should be granted. The tax issues raised by Respondent Cel-A-Pak, if they affect this case at all, only support that conclusion.

Respectfully submitted,

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